XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Cr.A. No. 676 of 2005

[Single Bench; Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANTS (In Jail)
1. Ran Sai, S/o. Man Sai, Aged about 35 years, Occupation- Cultivattor.
2. Manoranjam, S/o. Basant, Caste-Bargah, Aged about 30 years, Occupation-Cultivator

Both are resident of village Sarma, Chouki Basdei, P.S. Surajpur, Distt.Surguja (C.G.)

Vs

RESPONDENT: State of Chhattisgarh, Through P.S. Surajpur, District Surguja (C.G.)

Present:

Mr. J.K. Shashtri, Advocate for appellant No.1-Ransai.

Mr. O.P. Yadav, Advocate for appellant No.2-Manoranjan

Mrs. Madhunisha Singh, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(17th November, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 30th July, 2005 passed in Sessions Trial No.66/04, whereby learned 3rd Additional Sessions Judge, Surajpur, District Sarguja has convicted the appellants herein under Section 307/34 of the I.P.C. and

(42)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

sentenced each of them to undergo R.I. for 10 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo additional imprisonment for 2 months.

Case of the prosecution, in brief, is that, on 27.6.2003 around 11.00 a.m. when complainant Moharsai came out of his house to ease himself, accused Ransai & Manoranjan took him near the house of Hooblal by dragging, they asked for patta and when the victim replied that the Patta is deposited in the society, accused Manoranjan, who was holding battleaxe & club, assaulted the victim on both of his legs as a result of which he sustained incised injuries over his legs and fell on the ground and thereafter accused Ransai, who was holding sword, assaulted the victim on his head. On the basis of the report of the complainant, FIR (Ex.P-1) was registered on the same day at about 10.00 p.m. The complainant was sent for medical examination to Primary Health Centre, Basdei from where he was referred to District Hospital, Ambikapur where he remained hospitalized up to 6.8.2003. On the memorandum of the accused persons sword & battleaxe were taken into possession vide seizure memo of Ex.P-3 & Ex.P-5 respectively. Seized weapons were sent for examination to Primary Health Centre, Basdei where Dr. R.S. Singh (PW-11) examined the

(113)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

above weapons and gave his report of Ex.P-7 & Ex.P-9 respectively.

After completing investigation, charge sheet was field against the appellants. During trial, the prosecution examined 15 witnesses in all and thereafter statements of the appellants were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence & false implication. They also examined Vijay Prasad (DW-1) and Keshwar Prasad (DW-2) in their defence. However, learned Additional Sessions Judge after hearing the learned counsel for the respective parties has convicted and sentenced the appellants as mentioned in Paragraph 1 of this judgment.

Mr. Shashtri, learned counsel for appellant No.1-Ransai argued that the victim has alleged that this appellant gave only one blow by sword over his head, however, Dr. R.S. Singh (PW-11), who has examined the injuries, has stated in Para-10 of his deposition that the injury over parietal region was not of grievous nature but it was simple injury and the parts of the skull were intact and safe. He further argued that both the seizure witnesses of sword have turned hostile and they have not supported the case of the prosecution and thus, the seizure of sword has not been established. Doctor has given

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

size of sword as 7 cm long and 5 cm width and therefore, it does not meet the description of a sword. Even in the judgment the same size of the weapon has been mentioned by the trial court. He further argued that looking to the size of the injury over parietal region, it cannot be said that the same was caused by a sword.

Similarly, Mr. Yadav, learned counsel for appellant No.2-Manoranjan argued that no injury has been attributed to this appellant on the vital part of the victim. Dr. J.K. Bhutani (PW-10) has stated that on X-ray examination both the bones of right leg, fibula bone of left leg & ulna bone of left hand were found fractured. He has categorically stated that X-ray films of the victim were not available in the record of the court and in the absence of X-ray films he could not opine clearly regarding fracture. He further argued that Dr. Bhutani (PW-10) has also stated that fractures sustained by the victim could be caused by falling over the stone. He also argued that defence witness Vijay Prasad (DW-1) has categorically stated that victim Moharsai was in drunken condition, he was holding battleaxe and in this stage he chased appellant Manoranjan and while running he tried to scale the boundary wall as a result of which he fell on the ground. Manoranjan was trying to snatch

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(45)

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

his battleaxe; in the meanwhile, Ransai also came there. In the said scuffle the battleaxe fell down and the victim fell on the sharp edge of battleaxe and sustained injuries. Similar is the statement of Keshwar Prasad (DW-2). Referring to the statement of Hulasram (PW-2) it was argued that version of the defence is reflected from the statement of this witness, who has also narrated the circumstances in which the incident occurred. Moharsai (PW-1) is quarrelsome person. In the past also he was engaged in several criminal activities with the villagers, as is evident from the cross-examination of this witness. Dr. R.S. Singh (PW-11) has described the injuries sustained by the victim as simple in nature and therefore, conviction of this appellant under Section 307 of IPC cannot be sustained.

On the other hand, learned counsel for the State has supported the impugned judgment and argued that complainant Moharsai (PW-1) and his wife Dhanesari (PW-15) have categorically stated that Moharsai was assaulted by sword by appellant Ransai on his head as also on his clavicle bone and other parts of the body, whereas, accused Manoranjan assaulted the victim on both his legs & hand as a result of which three fracture injuries were suffered by Moharsai. He

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was hospitalized for a considerable period and in this period iron rod was fixed on his right leg. He remained hospitalized up to 10.8.2003 in the Government Hospital, Ambikapur. Number of injuries sustained by the victim, weapons of offence used by appellants to assault the victim and parts of the body on which the assaults were made clearly establishes the intention of the appellants and therefore, they have been rightly convicted under Section 307/34 of the IPC.

I have heard learned counsel for the parties. I have perused the oral and documentary evidence available on record as also the impugned judgment.

Moharsai (PW-1) has deposed that partition has taken in his family, however, their holdings are jointly recorded in the revenue records and record of land was with him. He deposited the Patta of land with the bank, as he had obtained loan and he could not take back the same. Accused Manoranjan was asking for Patta and on the date of incident when he came out of his house, accused persons caught him and asked to return the Patta. At that time accused Manoranjan was holding battleaxe, whereas, Ransai was holding sword. Manoranjan assaulted him on his legs and Ransai assaulted him over his head. Thereafter, both the accused persons assaulted him on various parts of his

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(47)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	body as a result of which he fell down and blood started oozing from his body. His wife came to rescue him and intervened. Other villagers also gathered. His wife was going to lodge the report, however, on the way he met the Police Inspector, who took him to the police station and thereafter he lodged the report of Ex.P-1. In the cross-examination various questions have been put to this witness and it has been suggested that he is a quarrelsome person. It has also been suggested that out of his fear appellant Manoranjan, his wife & mother have left their home and have started residing in the house of Nanhi. Similarly, the defence has tried to impeach the character of this witness by suggesting that he had married thrice and that he was engaged in quarrel with number of persons in the village and on this account he is facing prosecution. He has denied the suggestion that Manoranjan was not holding battleaxe and he has falsely implicated him. He has denied the suggestion that on the date of incident he was heavily drunk and in that condition he was involved in a scuffle with appellant Manorajan, Ransai came to separate them and during scuffle he fell on the ground as a result of which he sustained injuries and blood started oozing. He has further denied that he has falsely implicated Ransai.	

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Dhaneswari (PW-15), wife of victim, has also corroborated the statement of her husband and has stated that accused Manoranjan was asking Patta from her husband Moharsai and on his reply that he has deposited it in the bank, both the appellants took him from outside of her house and when she went to rescue her husband, she saw that both the accused persons had thrown her husband on the ground, accused Manoranjan was holding Balua i.e. battleaxe and by which he caused incised wound on his leg. Ransai was holding sword and he hit Moharsai over his head & neck by that sword. She tried to screen her husband, however, they threatened her by showing the sword. In the cross-examination, she has denied the suggestion that in fact Moharsai was going to the house of Manoranjan with battleaxe. To the suggestion by the defence that the victim sustained injuries as the accused persons and victim were involved in the scuffle, she expressed her ignorance.

Other witnesses namely Hulasram (PW-2), Khaleshwar Prasad (PW-3) & Rajmen Bai (PW-5) have turned hostile and they have not supported the case of the prosecution. However, in their cross-examination they have tried to support the defence.

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Even defence witness Vijay Prasad (DW-1) has admitted that at the time of incident the appellants and victim were present on the spot and they were engaged in fighting, though he has stated that Moharsai was chasing Manoranjan with battleaxe and in this process he fell from the boundary wall and sustained injuries. Keshwar Prasad (DW-2) has also stated that Moharsai was chasing Manoranjan while he was holding sword and at that time appellant Ransai came there and tried to intervene. They were involved in the scuffle and in that process the injured sustained injuries, as he fell over the sharp edge of the battleaxe.

Both the defence witnesses have given different version regarding the weapon of offence which the victim was carrying while he was in the intoxicated condition. Vijay Prasad (DW-1) has stated that the victim was holding battleaxe and chasing Manoranjan, whereas, Keshwar Prasad (DW-2) has stated that the victim was holding sword while chasing Manoranjan.

However, from the evidence of even the defence witnesses the presence of the accused persons at the time of incident when the victim sustained injuries is established.

The defence could not point out that the appellants sustained any injury over their persons at the time of incident

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

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which negates their defence that the complainant sustained injuries, as he himself was the aggressor and trying to chase the accused persons and while they were involved in the scuffle, the victim fell down over the battleaxe as a result of which he sustained injuries. On the contrary, the version of the victim and his wife is corroborated from the medical evidence, as Dr. R.S. Singh (PW-11), who examined the victim, has found as many as 8 injuries described herein below and the defence has not been able to impeach the credibility of the complainant in his detailed cross-examination.

The injuries sustained by the injured are as under:-

1. Bone deep incised wound of size 8x3cm over right leg below knee.
2. Incised wound over left foot medially of 5x11cm, lacerated wound of size 1.5cm x 1cm over left foot laterally over ankle and incised wound over left knee laterally with oblique placed of size 6x1/2 cm.
3. incised wound over right forearm of size 1.5 x1/2 cm. Abrasion of size 1x1/2cm over left elbow and one abrasion adjacent to above abrasion of size 1/2 cm x 1/2cm over the left elbow.
4. Incised wound of size 1 x1/2cm over neck adjacent to clevical.
5. Scratch abrasion of 6x1/4cm over left shoulder arterially.
6. Scratch abrasion of 12x1/4cm over the left side of neck.

(51)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -11-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. Incised wound of 1 x ¼ cm over left side of chin.
8. Incised wound of 1 x ¼ cm over left parietal region.

It is true that X-ray films were not available on record, however, treating doctor i.e. Dr. J.K. Bhutani (PW-10) of District Hospital, Ambikapur has categorically stated that the patient was advised for x-ray and after x-ray, his bone of right leg, fibula bone of left leg and ulna bone of left hand were found fractured and plaster was fixed. He has further stated that on 13.7.2003 an operation was conducted on his right leg for fixing the bone and the same was fixed by inserting rod (sternal fixseta) by putting seven screws and rod. He has also stated that upto 6.8.2003 the victim ~~was~~ remained admitted in the hospital, however, he was not able to state as to when he was discharged. He being an independent witness, who has treated the victim, his version regarding the injuries sustained by the victim cannot be doubted simply because x-ray films were not produced and proved during trial.

So far as the argument that injury sustained by the victim over his head was simple in nature, as opined by Dr. R.S. Singh (PW-11) in Para 10 of his deposition is concerned, for inferring the intention of the accused, injuries alone are not the circumstance on the basis of which the intention can be

(52)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

gathered and the same can be gathered by considering the weapon of offence used by the accused persons, force with which the assaults were made and portion of the body where the assault is made. In the instant case the appellants armed with deadly weapon like battleaxe and sword assaulted the victim over both his legs, hands, neck and head causing eight injuries over various parts of his body, which have been described herein before, the intention of the appellants is writ large.

Thus, from the evidence of victim and his wife, which is duly corroborated from the statement of Dr. R.S. Singh (PW-11) and Dr. J.K. Bhutani (PW-10) who have examined the victim and proved the injuries sustained by him, the involvement of appellants in the crime in question is established.

Therefore, in the considered opinion of this Court the trial court has not committed any illegality or infirmity in convicting and sentencing the appellants under Section 307/34 of the IPC.

In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

R/